

Remarks

The Office Action objects to claim 1-5, 8-12, 14-16 and 18. Claims 1-18 are pending. Claims 1-12, 14-16, 18 are rejected and objected to in the outstanding Office Action. Applicants traverse each and every rejection and objection. Applicants believe the amended claims sufficiently address the objections.

The Office Action rejects claims 1-4, 8-10, 14 and 15 under § 102 as being anticipated by Chen, US2003/077297. The Action alleges that Chen discloses a dry syrup. Applicants respectfully disagree. The Action contends that the present application defines dry syrup preparations as “preparations which are dissolved or suspended before use”. Applicants submit that the Office Action appears to not fully appreciate the full definition of the description of dry syrups, which can be found in paragraph 10 and for convenience the paragraph is as follows:

There are various types of pharmaceutical preparations such as tablet, powder, granule, capsules etc. Among them, a dry syrup preparation means “preparations which are dissolved or suspended before use” according to general rules for preparations in the Japanese pharmacopoeia. This is the preparation especially for patients like children who dislike a medicine or elderly persons having difficulty swallowing, and even the children and/or the elderly persons can easily take it. Furthermore, the preparation is handy, and weighing and preparing divided powder of this preparation are easy. (emphasis added)

As noted by the underlined sections, a dry syrup preparation is available to the consumer as a powder.

The definition of a dry syrup used by the Office Action is a basis that leads to several of the rejections of the present invention. Applicants respectfully request reconsideration of the definition of a dry syrup and that the rejections based on this definition are withdrawn.

The cited reference, Chen, does not disclose or teach such a dry syrup as defined by the Applicants' specification. Applicants respectfully submit that the characterization that Chen discloses such a powder is incorrect and that Chen does not anticipate the presently claimed invention.

Applicants submit that Chen does not disclose or teach a dry syrup preparation comprising loratadine. As noted in the Applicants' application, loratadine is hydrophobic and that "conventional agents were not enough to prepare the target dry syrup preparation." (see paragraph 6, Applications specification.) Chen does not disclose this problem and does not disclose or even teach the solution to this problem as is claimed in the invention. Chen does not provide any specific examples with loratadine. Chen allegedly discloses the use of liquid binders which is not the same as the binders used in the present invention. As such, Chen does not disclose the presently claimed invention.

Accordingly, Applicants respectfully submit that Chen does not disclose the presently claimed invention and respectfully request withdrawal of the anticipation rejections.

Claims 1 and 11 have been rejected under §102 over Comptom, US20030059741. When a claimed invention is not identically disclosed in a reference, and instead requires picking and choosing among a number of different options disclosed by the reference, then the reference does not anticipate. *Mendenhall v. Astec Industries, Inc.*, 13 USPQ2d 1913, 1928 (Tenn. 1988) aff'd, 13 USPQ2d 1956 (Fed Cir 1989). The disclosure of Comptom would require picking and choosing of a number of different options, however, this is not a basis for anticipation. Additionally, for a prior art reference to anticipate, every element of the claimed invention must be identically shown in a single reference. These elements must be arranged as in the claim under review. *In re Bond*, 910 F2d 831, 15 USPQ2d 1566, 1567, 1568 (Fed Cir 1990). Applicants submit that each element in the claimed invention is not identical to that which is disclosed by Comptom.

Further, Applicants submit that a reference must enable someone to practice the invention in order to anticipate under 35 USC §102(b). *Symbol Technologies v. Opticon Inc.* 935 F2d 1569, 19 USPQ 2d 1241, 1247 (Fed Cir 1991). Comptom discloses many things however, there is no working or enabled example that has the same arrangement of limitations as provided in the present invention.

Applicants respectfully submit that Comptom does not anticipate the presently claimed invention and that withdrawal of the rejection over Comptom is appropriate.

Claims 1 and 5 have been rejected under § 103 over Chen, in view of Shimizu, US5824339. The Action contends Shimizu is concerned with improved pharmaceutical suspensions that provide solid forms of active substances which are useful in preparing uniform suspensions. Applicants note that Shimizu provides effervescent compositions with a controlled release portion (see abstract). Specifically, Shimizu requires “enteric coating film, an effervescing component and an auxiliary effervescing agent which provides for controlled release of the physiologically active substance and is useful for preparing uniform solution or suspension having a refreshing sensation on ingestion.” (See Abstract.) Applicants submit that it is improper to selectively pick and choose selective teachings from Shimizu. Thus, the Office Action cannot use Shimizu to teach the use of select additives. Thus, the Applicants respectfully submit that the obviousness rejection based on Shimizu and Chen must fail and withdrawal of such rejection is appropriate.

The rest of the rejections are moot in view of the present response.

Applicants have added new claims 20-25 and submit that sufficient disclosure can be found in the specification and that no new matter has been added.

If the Office has any questions concerning this amendment, please contact the undersigned representative.

Respectfully submitted,



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